

**CERCLA SECTION 122(h)(1) SETTLEMENT AGREEMENT
FOR RECOVERY OF PAST AND FUTURE RESPONSE COSTS**

IN THE MATTER OF:

Dayco Corporation/L.E. Carpenter Superfund Site)
Borough of Wharton, Morris County, New Jersey)

L.E. Carpenter & Company)
SETTLING PARTY)
_____)

SETTLEMENT AGREEMENT
FOR RECOVERY OF PAST AND
FUTURE RESPONSE COSTS

U.S. EPA Region II
CERCLA-02-2011-2008

PROCEEDING UNDER SECTION
122(h)(1) OF CERCLA
42 U.S.C. § 9622(h)(1)

**CERCLA SECTION 122(h)(1) SETTLEMENT AGREEMENT
FOR RECOVERY OF PAST AND FUTURE RESPONSE COSTS**

TABLE OF CONTENTS

I.	<u>JURISDICTION</u>	3
II.	<u>BACKGROUND</u>	3
III.	<u>PARTIES BOUND</u>	6
IV.	<u>DEFINITIONS</u>	6
V.	<u>PAYMENT OF RESPONSE COSTS</u>	8
VI.	<u>DISPUTE RESOLUTION</u>	10
VII.	<u>FAILURE TO COMPLY WITH SETTLEMENT AGREEMENT</u>	11
VIII.	<u>COVENANT NOT TO SUE BY EPA</u>	12
IX.	<u>RESERVATIONS OF RIGHTS BY EPA</u>	12
X.	<u>COVENANT NOT TO SUE BY SETTLING PARTY</u>	13
XI.	<u>EFFECT OF SETTLEMENT/CONTRIBUTION</u>	14
XII.	<u>SITE ACCESS</u>	15
XIII.	<u>ACCESS TO INFORMATION</u>	16
XIV.	<u>RETENTION OF RECORDS</u>	16
XV.	<u>NOTICES AND SUBMISSIONS</u>	17
XVI.	<u>INTEGRATION/APPENDICES</u>	18
XVII.	<u>PUBLIC COMMENT</u>	18
XVIII.	<u>ATTORNEY GENERAL APPROVAL</u>	19
XIX.	<u>EFFECTIVE DATE</u>	19

**CERCLA SECTION 122(h)(1) SETTLEMENT AGREEMENT
FOR RECOVERY OF PAST AND FUTURE RESPONSE COSTS**

IN THE MATTER OF:)	SETTLEMENT AGREEMENT
)	FOR RECOVERY OF PAST AND
)	FUTURE RESPONSE COSTS
Dayco Corporation/L.E. Carpenter Superfund Site)	
Borough of Wharton, Morris County, New Jersey)	U.S. EPA Region II
)	CERCLA-02-2011-2008
L.E. Carpenter & Company)	
SETTLING PARTY)	PROCEEDING UNDER SECTION
)	122(h)(1) OF CERCLA
)	42 U.S.C. § 9622(h)(1)

I. JURISDICTION

1. This Settlement Agreement is entered into pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9622(h)(1), which authority has been delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-D and redelegated to the Director, Emergency and Remedial Response Division, U.S. Environmental Protection Agency, Region II, by Regional Order R-1200, dated November 23, 2004.

2. This Settlement Agreement is made and entered into by EPA and L.E. Carpenter & Company ("Settling Party"). The Settling Party consents to and will not contest the authority of the United States to enter into this Settlement Agreement or to implement or enforce its terms.

II. BACKGROUND

3. This Settlement Agreement concerns the Dayco Corporation/L.E. Carpenter Superfund Site ("Site") located in Borough of Wharton, Morris County, New Jersey. EPA alleges that the Site is a facility as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

4. The Site is located at 170 North Main Street, Borough of Wharton, Morris County, New Jersey. The Site occupies approximately 14.6 acres, and is located northwest of the intersection of the Rockaway River and North Main Street.

5. The Site includes buildings, warehouses, and remediated disposal areas that were associated with a former vinyl wall covering manufacturing facility.

6. L.E. Carpenter & Company ("L.E. Carpenter") manufactured vinyl wall coverings at the Site from approximately 1943 to 1987. L.E. Carpenter currently is an inactive subsidiary of PolyOne Corporation.

7. The manufacturing process involved the generation of various solid and liquid waste streams, some of which were disposed of in unlined, on-site lagoons.

8. The New Jersey Department of Environmental Protection ("NJDEP") conducted soil and groundwater sampling in 1980 and 1981. Sampling results indicated the presence of volatile organic compounds, base neutral compounds, metals, and polychlorinated biphenyls ("PCBs"). In addition, NJDEP observed immiscible chemical compounds floating on the groundwater table.

9. In 1982, L.E. Carpenter and NJDEP entered into an Administrative Consent Order ("ACO") in which L.E. Carpenter agreed to delineate and remove soil and groundwater contamination at the Site.

10. Pursuant to the 1982 ACO, L.E. Carpenter installed a groundwater monitoring system, initiated a passive recovery system for floating compounds on the ground water table, and excavated approximately 4,000 cubic yards of sludge and contaminated soils from the former on-site disposal areas. In addition, L.E. Carpenter removed sixteen aboveground/underground storage tanks and associated contaminated soils.

11. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on July 22, 1987.

12. In September 1986, NJDEP and L.E. Carpenter entered into an Amended ACO which superseded the previous ACO. Pursuant to the Amended ACO, L.E. Carpenter began a Site-wide remedial investigation ("RI") to determine the nature and extent of contamination at and emanating from the Site.

13. The RI was conducted in several phases and completed in 1992. In 1993, a Feasibility Study ("FS") was conducted to identify and evaluate cleanup actions.

14. On April 18, 1994, NJDEP issued a Record of Decision ("ROD"), with EPA concurrence. The major components of the ROD are:

- a. Installation and operation of a floating product/groundwater extraction system;
- b. Installation and operation of a groundwater extraction and treatment system, with a portion of the treated groundwater to be recirculated within a capture zone, another portion to be discharged into a deeper aquifer in accordance with groundwater discharge criteria, and another portion to be treated via biological treatment;
- c. Excavation and consolidation of bis (2-ethylhexyl) phthalate-contaminated soils into a soil treatment zone;

d. Reinfiltration of a portion of treated groundwater (with added oxygen and nutrients) into the unsaturated soil treatment zone via perforated piping to allow in-situ bioremediation of contaminated soils;

e. Installation of a vegetative soil cover for the area of the groundwater infiltration system;

f. Spot excavation and disposal of soils containing PCBs, lead and antimony, where levels exceed the soil cleanup levels in locations other than the east soils area designated as the disposal area;

g. Excavation of disposal area sludge/fill, which may inhibit in-situ treatment; and,

h. Establishment of environmental use restrictions on the property.

15. In 1995 and later in 2001, L.E. Carpenter performed a Site-wide delineation of lead-contaminated soils which revealed that lead contamination was more extensive than previously anticipated.

16. In December 1997, L.E. Carpenter replaced the floating product removal system that had been installed in 1982 with monthly mobile Enhanced Fluid Recovery ("EFR").

17. Based on data collected after the ROD, NJDEP, EPA and L.E. Carpenter agreed that modifications to portions of the remedy related to soils and the floating product were warranted.

18. In April 2004, L.E. Carpenter submitted a work plan to NJDEP and EPA which proposed a more aggressive remedial approach than anticipated in the ROD. The work plan included, but was not limited to, excavation and off-Site disposal of a large on-Site area containing floating product smear zone soils (visibly-contaminated soils associated with floating product), and a more aggressive approach for excavation of lead contaminated soil to a residential level of 400 milligrams per kilogram ("mg/kg") and to a 0.49 mg/kg residential PCB soil cleanup criteria.

19. Excavation of soil contaminated with lead and process wastes, floating product, and PCBs began in January 2005 and was completed in June 2005.

20. Approximately 46,520 tons of material was excavated and removed off-Site for disposal during this phase of the remedial action. This amount included 9,292 tons of lead-contaminated soil, 450 tons of process waste-contaminated soils, 34,052 tons of floating product smear zone-contaminated soils, and 2,727 tons of PCB-contaminated soils. This effort resulted in achieving 0.49 mg/kg of PCBs and 400 mg/kg for lead in soils, which is the New Jersey Residential Direct Contact Soil Cleanup Criteria.

21. On September 27, 2007, EPA issued an Explanation of Significant Differences ("ESD") to explain the changes made by NJDEP and EPA to the remedy selected in the April 1994 ROD. The ESD was issued pursuant to Section 117(c) of CERCLA, as amended, 42 U.S.C. § 9617(c), and Section 300.435(c)(2)(i) of the National Oil and Hazardous Substances

Pollution Contingency Plan ("NCP"), 42 C.F.R. Section 300.435(c)(2)(i). NJDEP concurred with the ESD through correspondence dated September 26, 2007. The ESD did not address any changes to the groundwater extraction and treatment systems as required by the ROD but noted that further work needed to be performed to evaluate an area of benzene, toluene, ethylbenzene, and xylene contamination near the MW-19/Hot Spot 1 Area and MW-30 (Source Reduction Area) portion of the Site.

22. EPA assumed the lead for the Site in April 2009 and on July 15, 2009 EPA issued a Unilateral Administrative Order ("UAO") CERCLA Docket No. 02-2009-2027 pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), to L.E. Carpenter to address the MW-19/Hot Spot 1 Area and MW-30 portion of the Site. The UAO required the MW-19/Hot Spot 1 Area and MW-30 to be delineated and remediated. Additionally monitored natural attenuation ("MNA") is currently being evaluated under this Order.

23. EPA has incurred and paid \$400,145.94 in response costs through August 31, 2012.

24. EPA and the Settling Party recognize that this Settlement Agreement has been negotiated in good faith and that this Settlement Agreement is entered into without the admission or adjudication of any issue of fact or law.

III. PARTIES BOUND

25. This Settlement Agreement shall be binding upon EPA and upon the Settling Party and their successors and assigns. Any change in ownership or corporate or other legal status of the Settling Party, including but not limited to, any transfer of assets or real or personal property, shall in no way alter the Settling Party's responsibilities under this Settlement Agreement. Each signatory to this Settlement Agreement certifies that he or she is authorized to enter into the terms and conditions of this Settlement Agreement and to bind legally the party represented by him or her.

IV. DEFINITIONS

26. Unless otherwise expressly provided herein, terms used in this Settlement Agreement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement Agreement or in any appendix attached hereto, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*

b. "Day" shall mean a calendar day. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday,

the period shall run until the close of business of the next working day.

c. "Effective Date" shall mean the effective date of this Settlement Agreement as provided by Section XVIII.

d. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

e. "Future Response Costs" shall mean all costs incurred or paid by EPA after May 18, 2006, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports, and other deliverables submitted pursuant to the UAO, in overseeing implementation of the Work, or in otherwise overseeing Settling Party's performance of the Work to determine whether such performance is consistent with the requirements of the UAO. Future Response Costs shall also include all Interim Response Costs.

f. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

g. "Interim Response Costs" shall mean all costs, including direct and indirect costs, (a) paid by the United States in connection with the Site between May 18, 2006 and the Effective Date, or (b) incurred prior to the Effective Date but paid after that date.

h. "Owner Settling Party" shall mean L.E. Carpenter & Company.

i. "Paragraph" shall mean a portion of this Settlement Agreement identified by an Arabic numeral or a lower case letter.

j. "Parties" shall mean EPA and Settling Party.

k. "Past Response Costs" shall mean all costs, including but not limited to direct and indirect costs that EPA or the U.S. Department of Justice on behalf of EPA has paid at or in connection with the Site through May 18, 2006.

l. "Section" shall mean a portion of this Settlement Agreement identified by a Roman numeral.

m. "Settlement Agreement" shall mean this Settlement Agreement [and any attached appendices]. In the event of conflict between this Settlement Agreement and any appendix, this Settlement Agreement shall control.

n. "Settling Party" shall mean L.E. Carpenter & Company.

o. "Site" shall mean shall mean the Dayco Corporation/L.E. Carpenter Superfund Site located at 170 North Main Street, Borough of Wharton, and Morris County, New Jersey and the aerial extent of contamination.

p. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

q. "Work" shall mean all activities the Settling Party is required to perform under the UAO and the Statement of Work ("SOW") set forth in Appendix II to the UAO. The objectives of the Work are set forth in Section I.A. of the SOW.

V. PAYMENT OF RESPONSE COSTS

27. Payment of Past Response Costs.

a. Within 30 days after the Effective Date, Settling Party shall pay to EPA \$91,657.65. Settling Party shall make all payments required by this Paragraph by remitting the amount of the payments to EPA by Electronic Funds Transfer ("EFT") to the Federal Reserve Bank of New York, accompanied by a statement providing the following information:

- (i) Amount of payment
- (ii) Title of Federal Reserve Bank Account to receive the payment: **EPA**
- (iii) Account Code for Federal Reserve Bank Account receiving the payment: **68010727**
- (iv) Federal Reserve Bank ABA Routing Number: **021030004**
- (v) Name and address of Settling Party
- (vi) Docket Number CERCLA-02-2011-2008
- (viii) Site/Spill Identifier: **02-5A**
- (ix) Field Tag 4200 of the Fedwire message: D 68010727 Environmental Protection Agency
- (x) SWIFT address: FRNYUS33
33 Liberty Street
New York, NY 10045

b. To ensure that a payment is properly recorded, a letter (or email to the Financial Management Center) should be sent at the time of payment that references the date of the EFT, the payment amount, that the payment is for Past Response Costs, the name of the Site, the Docket number, and the name and address of the party making payment to the United States, to the EPA Project Coordinator, Site Attorney and Financial Management Center, as follows:

New York Remediation Branch
Emergency and Remedial Response Division
U.S. Environmental Protection Agency, Region 2

290 Broadway, 20th Floor
New York, New York 10007-1866
Attn: Patricia Pierre

New Jersey Superfund Branch
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 17th Floor
New York, New York 10007-1866
Attn: Clara Beitin

U.S. Environmental Protection Agency
Cincinnati Finance Center, MS: NWD
26 W. Martin Luther King Drive
Cincinnati, Ohio 45268
Attn: Richard Rice (Financial Management Center)
AcctsReceivable.CINWD@epa.gov.

28. Payment by Settling Party of Future Response Costs.

a. Settling Party shall pay EPA all Future Response Costs not inconsistent with the NCP. On a periodic basis, EPA will send Settling Party a bill requiring payment that includes a printout of cost data in EPA's financial management system, known as a SCORPIOS Report. Settling Party shall make all payments within thirty (30) days of receipt of each bill requiring payment, except as otherwise provided in Paragraph 30 of this Settlement Agreement. Settling Party shall make all payments required by this Paragraph in accordance the procedures set forth in Paragraph 27.

b. At the time of payment, Settling Party shall send notice that payment has been made in accordance with Paragraph 27(b).

c. The total amount to be paid by Settling Party pursuant to Subparagraph 28.a. shall be deposited in the Dayco/L.E. Carpenter Superfund Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

29. If Settling Party does not pay Past Response Costs within thirty (30) days of the Effective Date, or does not pay Future Response Costs within thirty (30) days of Settling Party's receipt of a bill, Settling Party shall pay Interest on the unpaid balance of Past Response Costs and Future Response Costs, respectively. The Interest on unpaid Past Response Costs shall begin to accrue on the Effective Date and shall continue to accrue until the date of payment. The Interest on unpaid Future Response Costs shall begin to accrue on the date of the bill and shall continue to accrue until the date of payment. If EPA receives a partial payment, Interest shall

Attn: Patricia Pierre

New Jersey Superfund Branch
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 17th Floor
New York, New York 10007-1866
Attn: Clara Beitin

U.S. Environmental Protection Agency
Cincinnati Finance Center, MS: NWD
26 W. Martin Luther King Drive
Cincinnati, Ohio 45268
Attn: Finance (Richard Rice)
AcctsReceivable.CINWD@epa.gov

As to Settling Parties:

Attn: Corporate Secretary
L.E. Carpenter & Company
c/o PolyOne Corporation
33587 Walker Road
Avon Lake, Ohio 44012

XVI. INTEGRATION/APPENDICES

57. This Settlement Agreement constitutes the final, complete and exclusive Settlement Agreement and understanding among the Parties with respect to the settlement embodied in this Settlement Agreement. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Settlement Agreement. The following appendix is attached to and incorporated into this Settlement Agreement: "Appendix A" is the map of the Site

XVII. PUBLIC COMMENT

58. This Settlement Agreement shall be subject to a public comment period of not less than 30 days pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, EPA may modify or withdraw its consent to this Settlement Agreement if comments received disclose facts or considerations which indicate that this Settlement Agreement is inappropriate, improper or inadequate.

XVIII. ATTORNEY GENERAL APPROVAL

59. The Attorney General his designee has approved the settlement embodied in this Agreement in accordance with Section 122(h)(1) of CERCLA, 42 U.S.C. § 9622(h)(1).

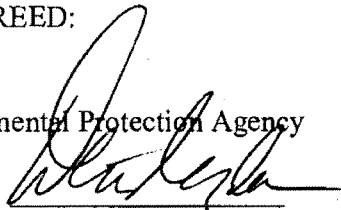
XIX. EFFECTIVE DATE

60. The effective date of this Settlement Agreement shall be the date upon which EPA issues written notice that the public comment period pursuant to Paragraph 34 has closed and that comments received, if any, do not require modification of or EPA withdrawal from this Settlement Agreement.

IT IS SO AGREED:

U.S. Environmental Protection Agency

By:

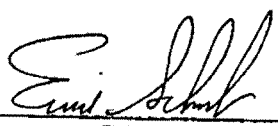


Walter Mugdan, Director
Emergency Remedial Response Division

March 5, 2013
[Date]

THE UNDERSIGNED SETTLING PARTY enters into this Settlement Agreement in the matter of EPA Docket Number CERCLA-02-2011-2008 relating to the Dayco Corporation/L.E. Carpenter Superfund Site located in Borough of Wharton, Morris County, New Jersey:

FOR SETTLING PARTY: L.E. Carpenter & Company
[Name]
33587 Walker Rd, Avon Lake, Ohio
[Address]

By: 
[Name]

20 March 2013
[Date]

MAR 25 2013

FIVE

